**JOHN ABRAHAM**

**v.**

**THE LAW SOCIETY OF SINGAPORE**

HIGH COURT, SINGAPORE
S RAJENDRAN J
[ORIGINATING SUMMONS NO. 866 OF 1990]
29 APRIL 1991

***ADMINISTRATIVE LAW:*** *Proceedings against advocate and solicitor - Recommendation to council of Law Society - Whether entitled to copy of report by Inquiry Committee - Reasonable opportunity to be heard - Fair hearing - Natural justice - Legal Profession Act [Sing], ss. 84(1)(a), (b), (d), 2(b), (3), 85(3), 86, 92.*

***LEGAL PROFESSION:*** *Complaint against advocate and solicitor - Referred to Inquiry Committee - Recommendation to council of Law Society - No formal investigation - Imposition of penalty - Right to be heard prior to imposition of penalty - Request for copy of report of inquiry committee - Order for discovery - Meaning of 'reasonable opportunity to be heard' - Natural justice - Power of Court to order discovery - Legal Profession Act [Sing], ss. 84(1)(a), (b), (d), (2)(b), (3), 85(3), 86, 92 - Rules of the Supreme Court [Sing], O. 24 - Supreme Court of Judicature Act [Sing], s. 18(2)(m), (3).*

***CIVIL PROCEDURE:*** *Discovery - Power of Court to order - Written law - Rules of Court - Discretion - Pending cause or matter - Supreme Court of Judicature Act [Sing], s. 18(2)(m), (3).*

As a result of a complaint lodged by C against the plaintiff, P, in relation to P's handling of documentation for the purchase of a property, P appeared before the Inquiry Committee, IC of the Law Society, LS, where P and his Counsel confined themselves to the issues concerning the purchase of the property. The IC forwarded its report to the Council on 16 May 1990.

On 1 June 1990 P's Counsel sent to the Council of LS, a copy of the written submission presented at the inquiry, indicating that the IC had concerned itself on the need for C to have independent advice on the purchase of the property and that he was enclosing the written submission because that issue was somewhat novel and he did not know if in its report, the IC had included the written submission.

By letter dated 6 June 1990, the LS informed the plaintiff that the IC was of the view that no formal investigation was necessary but had recommended that a penalty be imposed against P for improper conduct. The Council enquired whether P wished to be heard prior to the imposition of the penalty; P replied in the affirmative and also requested for a copy of the report of the IC.

LS refused to accede to P's request unless directed to do so by the Court. P then applied for an order of discovery for the furnishing of a copy of the IC report from LS.

P contended that the words "reasonable opportunity to be heard" in s. 85(3) of the Legal Profession Act (the Act) implied that P was entitled to know what the case against him and for that purpose he was entitled to a copy of the report made by the IC; further P submitted that as this penalty could adversely affect his career, there should be full compliance with the rules of natural justice.

L, who was Counsel for LS, said that LS was opposing this application as they were in need of a ruling on whether in such cases they were at liberty to give a copy of the report of the IC to the advocate and solicitor concerned. Further it was contended that LS had given P an

opportunity to be heard and that if a penalty was in fact imposed, P could then apply to the Court for a review of the decision made by LS. In other words until the Council had concluded its hearing, it would be premature to claim that there had been any unfairness.

L also submitted that the Court had no power to make the order of discovery prayed for as there was no cause or matter pending against LS, as was required by O. 24 of the Rules of the Supreme Court 1970 (the Rules).

**Held:**

**[1]** Under s. 85(3) of the Act, the council is required to give the advocate and solicitor concerned a reasonable opportunity to be heard. To effectively have such an opportunity, the advocate and solicitor needs to know what facts and other material the council has before it. In this case, P does not have any idea what the contents of the report were.

**[2]** It would be unfair to proceed with the hearing without disclosing to P the material that the council has before it, whether or not a penalty was imposed. To deny P access to the report is to deny P the opportunity of denying or clarifying any adverse comments that may be in the report. To that extent, P would not have been accorded a fair hearing and the Council's refusal to let P have access to the report had denied P his statutory right to a reasonable opportunity to be heard.

**[3]** The obligation of the council under s. 84(3) to give to the complainant its reason in writing for the determination that a formal investigation is unnecessary does not in any way affect the obligation of the council under s. 85(3) to give P a reasonable opportunity to be heard as it is an integral aspect of the right to be heard for him to have in his possession copies of all documents adverse to him.

**[4]** However, in view of the provisions of s. 18(2)(m) and s. 18(3) of the Supreme Court of Judicature Act, the Court could not make an order for discovery under O. 24 of the Rules as there was no cause or matter pending against LS. If P had sought a declaration that he was entitled to a copy of the report, the Court would have granted him the declaration.

*[Order accordingly.]*

**Cases referred to:**

*Norwich Phamacal v. Customs & Excise [1974] All ER 206*
*Re A Solicitor [1974] 3 All ER 853*
*Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 28 MLJ 169*

**Legislation referred to:**

Legal Profession Act, (Cap 161 1985 Edn.) [Sing], ss. 83(7), 84(1), (1)(a), (b), (d), (2)(b), (3), 85, (3), 86, 92
Rules of the Supreme Court 1970 [Sing], O. 24
Supreme Court of Judicature Act, (Cap 322) [Sing], ss. 18(2)(m), 18(3)

*For the plaintiff - Palakrishnan*
*For the defendants - T.Q. Lim*

**JUDGMENT**

**S Rajendran J:**

The plaintiff herein is an advocate and solicitor against whom a complaint was made to the Law Society of Singapore. In her complaint the complainant made various allegations of misconduct against the plaintiff which related mainly to the manner in which the affairs of the "House of Israel" in which the plaintiff was said to be a member was conducted. One of these allegations was that the plaintiff had asked her to sign certain documents in connection with the purchase of No. 577, Sembawang Road, Singapore in the joint names of the complainant and the plaintiff without giving her an opportunity to read the documents.

The Council of the Law Society referred the complaint to the Chairman of the Inquiry Panel who as required by the Legal Profession Act, Cap 161, 1985 Edn., constituted an Inquiry Committee to inquire into the matter. By a notice dated 20 February 1990, the Chairman of the Inquiry Committee forwarded the complaint to the plaintiff and invited him to give the Inquiry Committee any written explanation which he may wish to offer and to advise the Inquiry Committee whether he wished to be heard in which event the plaintiff was invited to appear before the committee at its hearing.

The plaintiff submitted a 47-page explanation supported by many documents in which he denied all the allegations of impropriety made in the complaint. The plaintiff also appeared before the Inquiry Committee. It appears from the affidavit of the plaintiff filed herein that when the plaintiff appeared before the Inquiry Committee, the plaintiff and his Counsel were asked by the committee to address them only on the question of the purchase of No. 577, Sembawang Road and that the committee looked into the case of *Re A Solicitor* reported in 1974 3 AER 853 in some detail. Plaintiff and his Counsel accordingly confined themselves to issues concerning the purchase of the said house. At a subsequent hearing of the committee, Counsel for the plaintiff tendered to the committee a lengthy written submission on the need for independent legal advice, particularly in a domestic-type situation.

The Inquiry Committee forwarded its report to the council on 16 May 1990. Counsel for the plaintiff under cover of his letter to the Executive Secretary of the Law Society dated 1 June 1990 enclosed a copy of the written submission. In the letter Counsel informed the Executive Secretary that the Inquiry Committee had only concerned itself on the need for the complainant to have been independently advised in the purchase of the property and that he was enclosing the written submission because that issue was somewhat novel and he did not know if, in its report, the Inquiry Committee had included the written submission.

By letter dated 6 June 1990, the Executive Secretary of the Law Society informed the plaintiff that the complaint against him had been investigated by the Inquiry Committee who were of the view that no formal investigation by a disciplinary committee was necessary but have recommended that a penalty be imposed against him for his improper conduct in:

(a) failing to advise the complainant to seek independent legal advice before obtaining her agreement to have the property transferred to the complainant and himself; and

(b) engaging his then partner to advise the complainant and act for her in the mortgage and purchase when what was required was legal advice from an entirely independent source.

The letter went to say that the council had made its determination under s. 84(1)(b) and that before the council imposes a penalty on him, the council wanted to know whether he wished to be heard pursuant to s. 85(3) of the Legal Profession Act, Cap. 161.

The plaintiff, through his solicitors, informed the council by letter dated 9 June 1990 that he wished to be heard. Subsequently, by letter dated 15 June 1990, his solicitors asked the Executive Secretary of the Law Society for a copy of the report of the Inquiry Committee. In a brief response the executive secretary replied that the society would not be able to accede to the request "unless it is on the directions of the Court". The plaintiff thereupon instituted the present proceedings in which he asks for an order that the defendants furnish to him a copy of the said report.

Under s. 83(7) of the Legal Profession Act, Cap 161, the Inquiry Committee is obliged in its report to deal, *inter alia*, with the following matters:

(1) the necessity or otherwise of a formal investigation by a disciplinary committee; and

(2) if in the view of the Inquiry Committee no formal investigation by a disciplinary committee is necessary, the Inquiry Committee is required to recommend:

(a) a penalty sufficient and appropriate to the misconduct committed, or

(b) that the complaint be dismissed.

The council is by s. 84(1) of the Act obliged to consider the report within one month of the receipt of the report. Upon consideration of the report the council may adopt one of the following courses:

(a) Refer the matter back to the Inquiry Committee or adjourn for consideration (s. 84(1)(d)).

(b) If in its report the Inquiry Committee recommends that there should be a formal investigation by a disciplinary committee, the council is obliged to apply forthwith to the Chief Justice to appoint a disciplinary committee to hear and investigate the matter (s. 86).

(c) If in its report, the Inquiry Committee recommends that a formal investigation is not necessary (and whether it recommends the dismissal of the complaint or the imposition of a penalty), the council may disagree with the recommendation and request the Chief Justice to appoint a disciplinary committee (s. 84(2)(b)).

(d) If in its report, the Inquiry Committee recommends that a formal investigation is not necessary and recommends that the complaint be dismissed, the council if it accepts the recommendation, may determine that a formal investigation is not necessary (s. 84(1)(a)).

(e) If in its report, the Inquiry Committee recommends that a formal investigation is not necessary and recommends a penalty for the misconduct committed, the council, if it accepts the recommendation that a formal investigation is not necessary may determine that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under s. 85. (Section 84(1)(b)).

Section 85(3) provides that before the council makes an order for the payment of a penalty, it shall notify the advocate and solicitor concerned of its intention so to do and give him a reasonable opportunity to be heard by the council.

In the present case, the council having considered the report of the Inquiry Committee made a determination under s. 84(1)(b) that no cause of sufficient gravity exists for a formal investigation but that the plaintiff should be ordered to pay a penalty under s. 85 for the two items of improper conduct that the Inquiry Committee had found. The council had accordingly on 6 June 1990 written to the plaintiff in terms set out above.

The principal argument raised by Mr. Palakrishnan, Counsel for the plaintiff, in this application is that the words "reasonable opportunity to be heard" in s. 85(3) necessarily implies that the plaintiff is entitled to know what the case against him is and for this purpose he is entitled to a copy of the report made by the Inquiry Committee. Mr. Palakrishnan submitted that in a case such as this where the imposition of a penalty would have an adverse effect on the career of a man, it is all the more important that there should be full compliance with the rules of natural justice. Mr. Palakrishnan submitted that the plaintiff can adequately address the council on the alleged misconduct only if the plaintiff knew exactly what the Inquiry Committee had reported to the council. As it was, the plaintiff was completely in the dark and, other than what was in the complaint sent to him, did not even know if the Inquiry Committee had taken further evidence from the complainant.

Mr T.Q. Lim who appeared for the Law Society of Singapore informed the Court at the outset that the Law Society was opposing the application because they were in need of a ruling on whether in such cases they were at liberty to give a copy of the report of the Inquiry Committee to the advocate and solicitor concerned.

Mr T.Q. Lim submitted that there was in this case no violation of the rules of natural justice. The council having made a determination under s. 84(1)(b) has, as required by s. 85, given the plaintiff an opportunity to be heard before making any order for the payment of a penalty. That hearing is still pending. Mr. Lim submitted that if the Court granted this application, the Court would be anticipating that the council would at the hearing be acting unfairly. He submitted that it may well be that after hearing the plaintiff the council may decide not to impose any penalty - in which event, the plaintiff could not say that he did not get a fair hearing. Mr Lim emphasised that the two issues on which the Inquiry Committee had found misconduct and recommended that a penalty be imposed were very limited in nature and submitted that on the facts of this case the Court cannot conclude that, unless the report of the Inquiry Committee was made available, there must be a failure of justice.

Mr. Lim further submitted that in the event the council imposed a penalty on the plaintiff, s. 92 of the Legal Profession Act, Cap. 161, gave the plaintiff an avenue to apply to Court for a review of the decision. At the review, it was open to the plaintiff to allege that the council had failed to give him a reasonable opportunity to be heard and, in deciding on the merits of such a submission, the Court would have to consider all the circumstances including the limited nature of the two issues and the manner in which the hearing before the council was in fact conducted before determining whether the council had acted fairly. Mr Lim pointed out that in none of the cases quoted by Mr Palakrishnan had the Court intervened before the proceedings commenced. The present proceedings and the fears that the plaintiff had that he may not get a fair hearing were, in Mr. Lim's submission, premature.

I do not accept that submission. Before the council can make an order for the payment of any penalty, the council is required under s. 85(3) to give the advocate and solicitor concerned a reasonable opportunity to be heard. To effectively have such an opportunity the advocate and solicitor needs to know what facts and other material the council has before it. In the present case the council has the complaint and the report of the Inquiry Committee. The plaintiff has a copy of the complaint but save for the fact that by the letter dated 6 June 1990 the plaintiff has been informed by the council that the Inquiry Committee had recommended that a penalty be imposed on him for the two items of improper conduct alleged therein the plaintiff does not have any idea what the contents of the report are.

In the case of *Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 28 MLJ 169, the report of a Board of Inquiry that looked into allegations of misconduct against Inspector Kanda was sent to the adjudicating officer before he sat to enquire into the charge. Inspector Kanda did not have the report and consequently had no opportunity of dealing with the contents of the report. The Court of Appeal in that case approached the matter on the basis of whether there was a real likelihood of bias on the part of the adjudicating officer as a result of having read the report and held that there was no such likelihood. The Privy Council, however, considered that such an approach was not the correct one. In the words of Lord Denning at p. 172 G of the report:

> The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo judex in causa sua* and *Audi alteram partem*. They have recently been put in the two words Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

In my view, the words of Lord Denning quoted above are apposite to the hearing that is pending before the Council of the Law Society. The plaintiff is not complaining that the council is or would be biased against him. His complaint is that in denying him access to the report of the Inquiry Committee, the council is being unfair to him in that the council is denying him his statutory right to a reasonable opportunity to be heard.

Mr. T.Q. Lim's response that until the council has concluded its hearing it would be premature to say that there has been any unfairness is not, in my view, a sufficient answer to the plaintiff's complaint. To proceed with the hearing without disclosing to the plaintiff the material that the council has before it would be unfair regardless of whether in the result a penalty was or was not imposed on the plaintiff. To deny him access to the report of the Inquiry Committee is to deny him the opportunity of denying or clarifying any adverse comments that there may be in the report. To that extent the plaintiff would not have been accorded a fair hearing and the Council of the Law Society would by its conduct in refusing to let the plaintiff have access to the report have denied the plaintiff his statutory right to a reasonable opportunity to be heard. Of course if the council, after hearing the plaintiff, decided not to impose a penalty the plaintiff would have no incentive to complain but that would not detract from the fact that the plaintiff had to meet the findings made against him by the Inquiry Committee without the benefit of knowing exactly what the Inquiry Committee had reported to the council.

Support for this view can be obtained from the judgment of Lord Denning in *Surinder Singh Kanda's* case where he says at p. 173B of the report:

> It follows, of course, that the Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the Judge without his knowing,

and at p. 173C where Lord Denning adopts the following view expressed by Rigby J who heard the case at first instance:

> In my view, the furnishing of a copy of the findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of justice as to entitle this Court to set aside these proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal.

For the above reasons, I am of the view that the plaintiff is entitled to a copy of the report of the Inquiry Committee prior to his appearing before the council in exercise of the right given to him under s. 85(3).

T.Q. Lim, also relied on s. 84(3) of the Legal Profession Act, Cap. 161, to justify the council's refusal to give a copy of the report of the Inquiry Committee to the plaintiff. Section 84(3) reads as follows:

> 84.(3) The council shall inform the advocate and solicitor and the person who made the application or complaint of the manner in which it has determined the application or complaint and in the event of the determination being that a formal investigation is unnecessary the council shall on the request of the person furnish him with its reasons in writing.

Mr. Lim submitted that there can be no doubt that the person entitled under s. 84(3) to the council's reasons in writing where the council has determined that no formal investigation is necessary is limited to the person who made the complaint and does not extend to the advocate and solicitor. He further submitted that in any event the entitlement under s. 84(3) is for reasons in writing for the determination of the council that a formal hearing is unnecessary and not to a copy of the report of the Inquiry Committee.

I agree with Mr. Lim that s. 84(3) is limited in scope. Under s. 84(3), the council is obliged to give to the person who made the complaint upon his request, its reasons in writing for the determination that a formal investigation is unnecessary. That obligation does not, in my view, in any way affect the obligation of the council under s. 85(3) to give the advocate and solicitor a reasonable opportunity to be heard. In my view the right to have copies of all documents adverse to him or that may be adverse to him that are in the possession of the council is an integral aspect of the right to be heard. Council cannot therefore rely on s. 84(3) to deny the plaintiff access to a copy of the report of the Inquiry Committee.

A further ground on which Mr. Lim relied in resisting this application was that the Court had no powers to make the order of discovery prayed for. His submission in brief was that while s. 18(2)(m) of the Supreme Court of Judicature Act, Cap 322 gave the High Court power to order discovery, such power could under that provision and under s. 18(3) be exercised only "in accordance with any written law or Rules of Court relating to them". He submitted that there was no written law relating to the power to order discovery and the only rules of Court prescribed in respect of discovery, namely the rules contained in O. 24 of the Rules of the Supreme Court 1970, would not apply in respect of the present application since power to order discovery is available under the rules only when there was a pending cause or matter. Mr. Lim submitted that since there was no cause or matter pending against the Law Society, the Court had no power to make the order sought.

Mr. Palakrishnan disagreed with this submission and relied on the decision of the House of Lords in *Norwich Phamacal v. Customs & Excise* [1974] AER 206 as authority for the proposition that the Court has a discretion to order discovery even against a party against whom there is no cause of action. That case, however, is not of much assistance since the issue here is whether in view of the provisions of s. 18(2)(m) and s. 18(3) of the Supreme Court of Judicature Act, Cap 322, the power of the Court to order discovery is limited in that it can be exercised only in accordance with any written law or Rules of Court. On this issue I accept the submission of Mr. T.Q. Lim that as there is no cause or matter pending against the Law Society an order for discovery under O. 24 cannot be made.

I am somewhat surprised that the Law Society should raise such a technical objection in this matter particularly since Mr. Lim had stated that the reason why the Law Society was objecting to the application was so as to obtain a ruling on whether they were at liberty to give an advocate and solicitor against whom council was proposing to impose a penalty under s. 85 of the Legal Profession Act, Cap. 161, a copy of the report of the Inquiry Committee. Had the plaintiff in this action sought a declaration that he was entitled to a copy of the report of the Inquiry Committee, I would have granted the declaration. The plaintiff, however, has only sought an order for discovery. Having accepted the submission of Mr. Lim that in the present case the Court has no power to order discovery, I have to dismiss the application made herein. There will, however, in the circumstances of this case be no order as to costs.

Also found at [1991] 2 CLJ 1436